

unverified under oath and did not constitute a substitute for the affidavit required under Section 1.229(d) of the Commission's Rules.

In short, the Carters engaged in insufficient "due diligence" in ascertaining the applicable facts. Plainly, there was no proper factual predicate for designation against Dolgoff of a site availability issue. Even if it were to be assumed, arguendo, that Mr. Fountain were correct in his belief that the transmitter site coordinates specified in Dolgoff's application did not correspond to land owned by Mr. J.R. King, nonetheless, there would be no basis for designation against Dolgoff of site misrepresentation/character qualifications issues, as requested by the Carters in their July 26, 1993 Contingent Motion To Enlarge Issues. A factual mistake alone with respect to site coordinates hardly begins to form the basis for designation against Dolgoff of misrepresentation and character qualifications issues. See Scott & Davis Enterprises, Inc., 88 FCC 2d 1090, 1099 (Rev. Bd. 1982) and cases cited therein. Thus, the Carters' request for designation of site misrepresentation and character qualifications issues against Dolgoff was patently frivolous when made, lacked any proper any factual basis, and reflected a reckless disregard for the true facts.

In their August 25, 1993 Consolidated Reply, the Carters persist in seeking designation against Dolgoff of Section 73.215 and related issues (the so-called "hard-look" issue) and of Equal Employment Opportunity ("EEO") and related reporting issues. As shown below, the Carters' continued persistence in seeking designation against Dolgoff of these hearing issues is frivolous and vexatious and constitutes abuse of process.

With respect to the requested Section 73.215/"hard-look" issue, the Carters continue to press their argument that Dolgoff's May 4, 1992 technical amendment to his application should have provided a Section 73.215 contour protection showing with respect to Radio Station WKNU(FM), Brewton, Alabama. However, as shown repeatedly by Dolgoff in this proceeding, contour protection is not at issue here, since Dolgoff's May 4, 1992 amendment was processed under the provisions of Section 73.213 of the Commission's Rules, not Section 73.215 of the Commission's Rules. Under Section 73.213, all that Dolgoff is required to do is to limit radiation in the direction of WKNU(FM)

to a maximum of 3 kW; thus, under Section 73.213 of the Commission's Rules, contour protection of WKNU(FM) is not required. By contrast, contour protection is required under Section 73.215 of the Commission's Rules.

Notwithstanding the foregoing, however, what makes the Carters' continued persistence in the quest for designation of a Section 73.215/"hard-look" issue an abuse of process is that Commission precedent clearly and unequivocally deprives the Presiding Judge of the authority to add such an issue to this proceeding.

As shown in Dolgoff's Opposition To Contingent Motion To Enlarge Issues, the Hearing Designation Order in this case contained a reasoned analysis by the Mass Media Bureau for its determination to deny the Carters' Petition To Deny Dolgoff's application; that Petition To Deny was predicated on the Carters' request for designation of the same Section 73.215/"hard-look" issue they continue to press in their August 25, 1993 Consolidated Reply.

It is well-established that, where, as here, the hearing designation order provides a "reasoned analysis" of the issues in question, the Presiding Judge is precluded from revisiting the determinations reached in the hearing designation order. See Atlantic Broadcasting Co., 5 FCC 2d 717 (1966); George E. Cameron, Jr. Communications, 91 FCC 2d 870 (Rev. Bd. 1982); Simon Geller, 90 FCC 2d 250 (1982); Central Alabama Broadcasters, Inc., 88 FCC 2d 1501 (Rev. Bd. 1982).

In light of the foregoing precedent, which has been repeatedly pointed out to counsel for the Carters by Dolgoff in his pleadings herein, it is simply inexplicable how the Carters could have rationally concluded that there was even the slightest basis in law for the Presiding Judge to designate a Section 73.215/"hard-look" issue against Dolgoff, in light of the reasoned analysis supporting denial of such issue contained in the Hearing Designation Order in this case. Patently, there was no such legitimate basis, and the Carters clearly knew so. The Carters' request, in their Contingent Motion To Enlarge Issues, for designation by the Presiding Judge of a Section 73.215/"hard-look" issue, and their continued persistence in seeking designation of such an issue by the Presiding Judge in their August 25, 1993 Consolidated Reply, is thus frivolous, vexatious and an abuse of process.

In their Contingent Motion To Enlarge Issues, the Carters sought designation against Dolgoff of hearing issues to determine: (a) whether Dolgoff, personally, was "guilty" of willful and repeated violations of the Commission's Equal Employment Opportunity rule (Section 73.2080 of the Rules); (b) whether Dolgoff violated Sections 1.65 and 73.3514 of the Commission's Rules by allegedly failing to disclose in his application that the Commission had determined that the licensee of Radio Station WUMX(FM) had violated Section 73.2080 of the Commission's Rules; and (c) whether, as a result, Dolgoff "has the basic qualifications to be a Commission licensee".

As shown in Dolgoff's August 10, 1993 Opposition To Contingent Motion To Enlarge Issues, in Letter To Howard B. Dolgoff, 5 FCC Rcd 7695 (December 26, 1990), the full Commission granted the September 28, 1988 application (File No. BRH-880928UB) for renewal of license of WTHZ(FM); however, that renewal was granted subject to periodic EEO reporting conditions and was granted for a short-term ending February 1, 1992. In addition, the Commission imposed on Dolcom Broadcasting, Inc. an \$18,000 forfeiture by virtue of what the Commission determined were repeated violations of Section 73.2080 of the Commission's Rules (the EEO rule). No willful violations of that rule were found by the Commission. Moreover, the Commission specifically found that there was no evidence of discrimination by the licensee of WTHZ(FM). Moreover, the Commission granted the 1988 WTHZ(FM) license renewal application, since the Commission found "no substantial and material question of fact to warrant a hearing". 5 FCC Rcd at 7695.

Under these circumstances, it is clear that there is no basis, either in fact or in law, for granting the Carters' request for designation of EEO, reporting and related character qualifications issues against Dolgoff. The determinations by the full Commission in Letter to Howard B. Dolgoff, supra, constitute res judicata as to the issues in question -- including the issue of whether the licensee of WTHZ(FM) in 1990 had the requisite character qualifications to remain a licensee. The Commission clearly resolved this issue in the affirmative by granting the 1988 license renewal application for WTHZ(FM), albeit subject to periodic EEO reporting conditions in order to allow the

Commission to monitor WTHZ(FM)'s progress in meeting the Commission's EEO rule. Consequently, under Atlantic Broadcasting Co., 5 FCC 2d 717 (1966); George E. Cameron, Jr. Communications, supra; Simon Geller, supra, and Central Alabama Broadcasters, Inc., supra, the Presiding Judge is precluded from revisiting the determinations raised by the Commission in its reasoned opinion in Letter to Howard B. Dolgoff, 5 FCC Rcd 7695 (1990).¹⁰ The fact that the full Commission determined that the 1988 WTHZ(FM) renewal application should be granted renders the Carters' request for designation of a character qualifications issue patently frivolous and an abuse of process.

In their August 25, 1993 Consolidated Reply (see Exhibit 6, infra), the Carters persist in making the patently false factual representation that, in Letter to Howard B. Dolgoff, supra, the Commission found that the licensee of WTHZ(FM) had engaged in "willful and repeated violations" of the Commission's EEO Rule. Consolidated Reply at 3 and 4. Nowhere in Letter to Howard B. Dolgoff, supra, did the Commission make any finding or conclusion, or even intimate, that WTHZ(FM) or its licensee had engaged in willful violations of the Commission's EEO Rule; rather, as noted above, the Commission imposed an \$18,000 forfeiture on Dolcom Broadcasting, Inc. by virtue of what the Commission determined was a repeated violation of the rule. This blatant and brazen repetition and perpetration of reckless falsehoods by the Carters is, in and of itself, an abuse of process.

The Carters' persistence in seeking the designation by the Presiding Judge of EEO/non-disclosure/character issues against Dolgoff in the face of all the foregoing must be deemed to constitute an abuse of the Commission's processes, particularly in light of the Carters' persistent repetition, in their Consolidated Reply, of the patent falsehood that the Commission had held that the

¹⁰ The licensee of WTHZ(FM) did not contest the Commission's imposition of a short-term renewal of license with respect to the station, nor the imposition of EEO reporting conditions. Rather, the licensee sought mitigation of the \$18,000 forfeiture that the Commission had imposed. The Commission declined to reduce the forfeiture amount. See 7 FCC Rcd (1992).

licensee of WTHZ(FM) had engaged in "willful" and repeated violations of the Commission's EEO Rule.

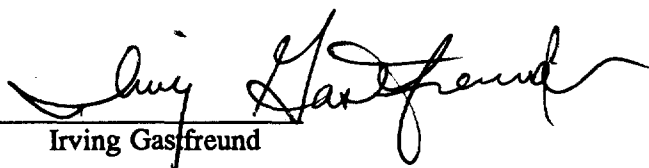
IV. Conclusion

The Court of Appeals has enjoined that the Commission has a responsibility, k under Section 309 of the Communications Act, to look for the existence of a fire "when it is shown a good deal of smoke." Citizens For Jazz on WRVR, Inc. v. FCC, 775 F.2d 392, 397 (D.C. Cir. 1985). Here, Dolgoff has shown much more than "a good deal of smoke"; the Presiding Judge is therefore duty-bound, under Section 309 of the Communications Act, to investigate for the existence of a "fire" by designating against the Carters the hearing issues sought by Dolgoff so that the substantial and material questions of fact which Dolgoff has shown exist can be resolved in the crucible of an evidentiary hearing.

In light of all the foregoing, the site misrepresentation/lack of candor issues, financial misrepresentation/lack of candor issues, and the abuse of process issue requested by Dolgoff should be designated against the Carters.

Respectfully submitted,

HOWARD B. DOLGOFF

By: 
Irving Gasfreund

Kaye, Scholer, Fierman, Hays &
Handler
The McPherson Building
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005

His Attorneys

September 1, 1993

Exhibit 1

SECTION VI - EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

1. Does the applicant propose to employ five or more full-time employees?

☐ Yes ☒ No

If Yes, the applicant must include an EEO program called for in the separate Broadcast Equal Employment Opportunity Program Report (FCC 398-A).

N/A

SECTION VII - CERTIFICATIONS

1. Has or will the applicant comply with the public notice requirement of 47 C.F.R. Section 73.3580?

☒ Yes ☐ No

2. Has the applicant reasonable assurance, in good faith, that the site or structure proposed in Section V of this form, as the location of its transmitting antenna, will be available to the applicant for the applicant's intended purpose?

☒ Yes ☐ No

If No, attach as an Exhibit, a full explanation.

Exhibit No.
N/A

3. If reasonable assurance is not based on applicant's ownership of the proposed site or structure, applicant certifies that it has obtained such reasonable assurance by contacting the owner or person possessing control of the site or structure.

Name of Person Contacted

Gregory Meyer

Telephone No. *(include area code)*

work (512)-221-1541 home (512)-223-6305

Person contacted: *(check one box below)*

☒ Owner

☐ Owner's Agent

☐ Other *(specify)*

The APPLICANT hereby waives any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. *(See Section 304 of the Communications Act of 1934, as amended.)*

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and incorporated herein.

The APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with 47 C.F.R. Section 1.65, the APPLICANT has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.
U.S. CODE, TITLE 18, SECTION 1001.

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Name of Applicant Mark and Renee' Carter	Signature <i>Mark Carter</i> <i>Renee Carter</i>
Date 12/21/91	Title N/A

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT
AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, analysts, engineers and applications examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to vary from 71 hours 45 minutes to 301 hours 30 minutes with an average of 118 hours 28 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, can be sent to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0027), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Exhibit 2

AmSouth Bank of Florida
5050 Highway 98
Post Office Box 6099
Destin, Florida 32541-6099
(904) 837-2191

AmSouth

July 23, 1993

Mr. and Mrs. Mark Carter
Rt. 2, Box 2810
Santa Rosa Beach, FL 32459

Dear Mr. and Mrs. Carter;

This letter will confirm that, based on discussions we had on December 12, 1991, AmSouth Bank of Florida was at that time, and continues to be, willing to make available, up to \$250,000.00 for the purpose of constructing and operating a new FM Radio Station at Miramar Beach, Florida. The proposed terms, which were based on our review of your FM application, your proposed \$250,000.00 budget, the bank's experience with you as customers, and your personal financial statements, were as follows:

Borrower:	Mark and Renee Carter, in their individual capacities.
Loan Amount:	Up to Two Hundred Fifty Thousand and No/100 Dollars (\$250,000).
Use of Proceeds:	Construction, operating, and other start up costs listed on your \$250,000 budget associated with the financing of an FM Radio Station in Miramar Beach, Florida.
Interest Rate:	AmSouth Bank of Florida Prime Commercial Rate, as defined in our loan documents, plus 2.5% with a 1.5% fee.
Repayment:	7 to 10 year term loan; interest only to be paid on the outstanding balance monthly for the first six months. Monthly principal payments of \$3,000.00 plus interest will begin six months after the loan is closed.

Mr. and Mrs. Mark Carter
July 23, 1993
Page 2

Security: First lien on equipment and 2nd Mortgage
on real estate located at Mack Bayou Road

Guarantors: Mark and Renee Carter

As we discussed on December 12, 1991, our approval to advance the above described loan was expressly subject to the following conditions:

1. The filing of a formal loan application with our Bank.
2. Collateral values and appraisals satisfactory to our Bank.
3. Approval by the appropriate lending authorities of our Bank.
4. Financial information satisfactory to the Bank.

This letter is not to be construed as approval or commitment for the above loan; rather it indicates that, as of December 12, 1991, AmSouth Bank of Florida was willing to extend the above loan provided that the preceding conditions are met. In addition, AmSouth Bank of Florida continues to be willing to extends such loan on the same conditions, provided that there have been no material changes to the information you provided us with in December 1991.

Sincerely,



Mark B. Holdbrooks
Assistant Vice President
Sandestin Office

Exhibit 3

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 250,000

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
AmSouth Bank of Florida Mr. Joe R. Miller Vice President P.O. Box 697 Destin, FL 32541-0697	(904)-837-2191	none	\$250,000

Exhibit 4

DECLARATION

I, Howard B. Dolgoff, do hereby declare, certify and state as follows:

1. I am an individual applicant (FCC File No. BPH-911223ME) for a construction permit for a new FM radio station on Channel 292A in Miramar Beach, Florida.

2. In February, 1992, I undertook the task of locating and securing an alternate transmitter site to improve my application's proposed coverage with respect to areas and populations prior to the amendment-as-of-right deadline applicable to the Miramar Beach application. In connection with those efforts, I telephoned Mr. Gregory Meyer, who, together with his wife, Gloria J. Meyer, own land that appeared to be potentially suitable as a transmitter site. Indeed, a portion of Mr. Meyer's land east of Mack Bayou Road is specified as the proposed transmitter site of Mark and Renee Carter (the "Carters") in their pending application (FCC File No. BPH-911224MD) for a construction permit for a new FM radio station on Channel 292A in Miramar Beach, Florida.

3. During my initial telephone conversation with Mr. Meyer in February, 1992, I explained to him my desire to purchase or lease a portion of his property in Miramar Beach for the construction of a radio station transmitting antenna tower. Mr.

Meyer's reaction was favorable. He stated (and his wife, Gloria J. Meyer, later confirmed for me) that Mr. and Mrs. Meyer would be willing to lease or sell approximately four acres of the lower southeast corner of their property to me for use as a transmitter site. This appears to be the very same acreage that is the subject of an option agreement entered into by the Carters with Mr. and Mrs. Meyer as of May 1, 1992. A copy of that option agreement (which appears to have been entered into following my discussions with Mr. Meyer) is annexed hereto as Attachment 1.

3. Significantly, Mr. Meyer specifically advised me in our February 1992 telephone conversation that, as of that date, he had not entered into any agreement or arrangement with or commitment to anyone else contemplating the sale or lease of his property. Mr. Meyer acknowledged that, in December, 1991, he had been contacted by Mark Carter, who inquired as to whether Mr. Meyer's Miramar Beach, Florida, property was available for purchase. According to Mr. Meyer, he told Mr. Carter, in December, 1991, that he was prepared to entertain discussions about the possibility of selling the property if Mr. Carter had a serious offer to make. However, according to Mr. Meyer, during the December 1991 conversation Mr. Carter and Mr. Meyer never discussed particular terms or even any particular purchase price. Mr. Meyer indicated to me during our February 1992 conversation that, when he and Mr. Carter ended their conversation in 1991, it was Mr. Meyer's expectation that Mr. Carter would contact him

again with a specific offer. However, according to Mr. Meyer, neither Mr. Carter nor anyone acting on behalf of him or his wife ever contacted Mr. Meyer or Mrs. Meyer for this purpose following Mr. Meyer's initial telephone conversation with Mr. Carter in December 1991. During our February 1992 conversation, Mr. Meyer emphasized to me that he had never made any commitment to Mr. Carter regarding the land in question.

4. My negotiations with Mr. and Mrs. Meyer concerning the possible use of their land as a transmitter site for my application continued through the spring of 1992. In late April, 1992, Mr. David Kramer, the real estate broker representing Mr. and Mrs. Meyer in Florida with respect to their Miramar Beach property, advised me that he had contacted Mark Carter in the latter part of April 1992 on instructions from Mr. Meyer to see whether Mr. Carter had an offer to make with respect to the purchase of Mr. and Mrs. Meyer's property. I was subsequently advised by Mr. Kramer that Mr. Carter made an offer in the latter part of April 1992 to acquire an option to purchase a portion of Mr. and Mrs. Meyer's property, that negotiations concerning the terms of the option thereupon ensued, and that an option agreement between Mr. and Mrs. Carter and Mr. and Mrs. Meyer was entered into in early May 1992.

5. My negotiations with respect to use of the Meyers' property as a transmitter site for my application did not result

in an agreement, and I ultimately specified a transmitter site on land owned by Mr. J.R. King in Miramar Beach, Florida.

I hereby declare, certify and state, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Howard B. Dolgoff
Howard B. Dolgoff

Executed on: 8-27-93

Attachment 1

RECEIPT FOR DEPOSIT — O. R. TO PURCHASE — CONTRACT FOR .LE
EMERALD COAST ASSOCIATION OF REALTORS
 of South Okaloosa-Walton Counties, Inc.



FOR USE BY MEMBERS ONLY

COPY

RECEIPT is hereby acknowledged for SEAGRAVE ON THE BEACH REALTY, INC. DATE 5/1/92
 a Licensed Real Estate Broker, hereinafter called REALTOR.
 BY: DAVID KRAMER NAME OF AGENT
 THE SUM OF ONE THOUSAND FIVE HUNDRED /100 Dollars (\$ 1,500.00) check ☒ cash ☐ other ☐
 as an earnest money deposit (EMD)
 FROM: MARK & RENEE' CARTER hereinafter called Buyer
 on account of offer to purchase the property of MR & MRS. Gregory Meyer hereinafter called Seller.
 Said property situated in County of Walton, State of Florida.
 Address: EAST OF MACK BAYOU Rd.
 Legal Description: EAST 528' of Lot 27, Sec. 27, T2S, R21W

PURCHASE PRICE.....\$ 80,400.00
 *PLUS ESTIMATED CLOSING COSTS.....\$ 600.00
 EQUALS ACQUISITION COSTS (FHA Only).....\$ —
 PLUS VA FUNDING FEE, FHA MIP OR PMI.....\$ —
 PLUS PRE-PAID ITEMS, EXCLUSIVE OF PREPAID INTEREST.....\$ —
 EQUALS TOTAL TRANSACTION PRICE.....\$ 81,000.00
 LESS (FHA/VA/CONV) MORTGAGE LOAN.....\$ —
 LESS ESTIMATED MTG. BALANCE TO BE ASSUMED.....\$ —
 **LESS DEFERRED PAYMENTS TO SELLER.....\$ 64,320.00
 EQUALS ESTIMATED TOTAL CASH REQUIREMENTS.....\$ 64,920.00
 LESS EMD RECEIVED. (1st Year Lease Pymt.).....\$ 1,500.00
 LESS ADDITIONAL EMD ON OR BEFORE.....\$ —
 EQUALS ESTIMATED BALANCE DUE AT CLOSING.....\$ 63,380.00

**Deferred Pmts
 Seller to finance \$64,320.00
 for 10 years @ 10% with
 Buyer making 120 equal mo
 thly payments of \$850.00
 Note to be secured by A
 mortgage. No penalty for
 prepayment.

\$ — Estimated Monthly Payment
 @ 10 % 10 Yrs.

*1. a. DISCLOSURE: At such time as this transaction is closed, certain sums may be required from the buyer in the form of closing costs. Listed below are the major closing cost items ordinarily found in a transaction. Checked are those items which may be payable pursuant to the contract which you are about to sign. The estimated total of these closing costs and prepaid items to be paid by Buyer (not including prepaid interest) is approximately: \$ —

	To Be Paid By Seller	To Be Paid By Buyer		To Be Paid By Seller	To Be Paid By Buyer		To Be Paid By Seller	To Be Paid By Buyer
Appraisal Fee			Lender's Charges			Discount Points, Mortgage		
Credit Report			Transfer Fee, Mortgage			VA Funding Fee		
Survey	X		Deed/Assign, Doc Stamps	X		MIP/PMI		
Torment Inspection			Deed Recording Fee		X	Escrow, Taxes, Ins., Etc.		
Home Warranty			Mtg. Note, Doc Stamps		X	Hazard Insurance		
Roof Inspection			Mtg. Intangible Tax		X			
Owner's Title Insurance	X		Mtg. Recording Fee		X			
Mitgee's Title Insurance			Origination Fee, Mortgage					

- b. SEPARATE DISCLOSURES: Buyer acknowledges receipt of a separate disclosure of agency, agency compensation and radon gas.
- PRORATIONS: All tax assessments for the current year, other assessments, rentals, monthly mortgage insurance premiums, and interest on existing mortgages (if any) shall be pro-rated as of the date of closing. If purchase price includes the assumption of a mortgage with funds in escrow for payment of taxes, insurance, association fees or other charges, the Buyer agrees to reimburse the Seller for said escrow funds assigned to Buyer at closing, with all mortgage payments to be current at the time of closing. (If taxes and other items are not to be pro-rated, specify agreement as to such items.)
STANDARD
 - IF LOAN BEING APPLIED FOR: Buyer will make prompt, diligent, and continuing efforts to qualify for said mortgage including furnishing the mortgage company all requested information, affidavits, instruments, statements, etc. incidental to qualifications. After a reasonable time if Buyer is unable to qualify, he shall be refunded his earnest money deposit less all cost incurred on his behalf such as credit report, phone calls, appraisal fee, etc. and all parties shall be relieved of all responsibilities under this contract. A financing addendum has been attached to this contract.
 - EVIDENCE OF TITLE: It is recommended that the Buyer obtain for his protection a title insurance policy or an attorney's opinion of title. The Seller is under no obligation to furnish at his expense either an abstract of title, abstract continuation, or title insurance policy unless he so agrees.
 - EXAMINATION OF TITLE: The Buyer shall have 15 days from receipt to examine evidence of title. In the event examination proves the title to be unmarketable, the Seller shall have a reasonable period of time within which to cure the designated defects in the title that render the same unmarketable. The Seller hereby agrees to make every diligent effort to clear the title defects. Upon being cured and notice of the fact being given to the Buyer, this transaction shall be closed within 15 days of delivery of notice or as specified in para 12. Upon Seller's failure to correct the unmarketability of the title, at the option of the Buyer, the Seller shall deliver the title in its existing condition. Otherwise the REALTOR, or the Seller, holding the herein mentioned earnest money deposit shall return the same to the Buyer upon demand and shall return the evidence of title to the Seller and all rights and liabilities on the part of the Buyer arising hereunder shall terminate. In the event the Seller is able to furnish a title insurance binder or other evidence of the marketability of title without exceptions other than normal utility easements, current taxes, etc., this shall be proof of the marketability of title and Buyer shall accept said title.
 - CONVEYANCE: Conveyance of title shall be by Warranty Deed; Conveyance of leasehold shall be by Assignment. Conveyance shall be free and clear of all encumbrances and liens of whatsoever nature, except as herein otherwise provided.
 - IF NEW HOME TO BE BUILT: The Seller agrees to cause said dwelling to be completed and ready for occupancy by the Buyer within N/A months from the date of the contract, weather permitting. In the event said dwelling is not completed within the time above specified, the Seller or the REALTOR shall, at the option of the Buyer, refund, to the Buyer the aforementioned earnest money deposit and this contract shall thereupon be null and void. The contract price includes costs of construction loan financing. The Seller agrees to pay any special assessments for improvement bonds on the real property herein described including those payable in the future, for improvements included in the plans and specifications on file. All liens for special assessments or improvement bonds otherwise incurred or imposed shall be paid for by Buyer. It is agreed the final compliance inspection report shall constitute sufficient evidence of completion of the building and other improvements specified in the plans. Insulation has been or will be installed in the new residence per specifications provided by the builder.

8. **INSPECTIONS:** All heating, air conditioning, electrical, plumbing, appliances and other: _____ shall be in working order at the time of closing. Buyer shall satisfy himself as to the normal working condition of these items prior to closing.
9. **SURVEY:** If the Buyer desires a survey, the property shall be surveyed at SELLER expense prior to closing. If the survey shows an encroachment, the same shall be treated as a title defect.
10. **NO REPRESENTATIONS, guarantees, or warranties** of any nature whatsoever which are not herein expressed have been made by any party hereto or their representatives. This contract is the only agreement between the parties. Both the Buyer and Seller acknowledge that any other statement, oral or written, is not a material representation on which this contract is based. The Multiple Listing Service (MLS) data should not be relied upon.
11. **OCCUPANCY** will be given BUYER on CLOSING. If Buyer takes occupancy before closing, or Seller continues occupancy after closing, it shall be by separate agreement.
12. **CLOSING:** This transaction shall be closed approximately SEE ADDENDUM. TIME MAY BE MADE THE ESSENCE of this contract by notice in writing, stipulating a reasonable time for further performance. Any notice necessary under this agreement may be sent by mail to the last known address of the party to be notified.
13. **TERMITE CLAUSE:** Within N/A days after the date of this agreement at N/A expense, the Buyer shall have the right to have the property inspected by a Florida Certified Pest Control Operator to determine if there is any active termite infestation or visible existing damage from termite infestation in the improvements. ("Termites" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act.) If either or both are found, Seller shall pay all costs of treatment and repair of said improvements which have been damaged. PROVIDED, HOWEVER, in the event costs to be incurred are more than two percent (2%) of purchase price, the Seller may declare this agreement null and void and all monies deposited will be refunded, or the Seller may offer to convey said property in its present condition with the price reduced by the estimated costs to be incurred. In the event the Buyer refuses to accept said property in its present condition with the purchase price reduced by the estimated costs to be incurred, then the Buyer shall so notify the Broker and Seller, in writing, within N/A days of the offer, and this agreement will be considered null and void and all monies will be refunded. Otherwise, the same shall be in full force and effect.
14. **ROOF CLAUSE:** Within N/A days after the date of this agreement, at Buyer's expense, Buyer shall have the right to have the roof inspected by a licensed roofer or licensed general contractor to determine whether there is visible evidence of leaks or damage (including fascia and soffit). If either or both are found, Seller shall pay all costs of repairs to said roof. PROVIDED, HOWEVER, in the event the costs to be incurred are more than two percent (2%) of the purchase price, the Seller may declare this agreement null and void and all monies deposited will be refunded; or the Seller may offer to convey said property in its present condition with the purchase price reduced by the estimated costs to be incurred. In the event the Buyer refuses to accept said property in its present condition with the purchase price reduced by the estimated costs to be incurred, then the Buyer shall so notify the Broker and Seller, in writing, within N/A days of the offer, and this agreement will be considered null and void and all monies will be refunded, otherwise, the same shall be in full force and effect.
15. **HOME WARRANTY:** The Buyer has been offered a Home Warranty Policy. The Buyer (accepts/declines) this coverage. The premium for this protection is to be paid by the (Buyer/Seller). (Agent/Subagent) (will/will not) receive compensation.
16. **FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified (including payment of all deposits hereunder), the deposit(s) paid by Buyer may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon Buyer and Seller shall be relieved of all obligations under Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If, for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.
17. **PAYMENT OF EXPENSES:**
a. If this transaction fails to close through no fault of Seller, all loan and sales processing and closing costs incurred, whether the same were to be paid by Seller or Buyer, shall be the responsibility of Buyer, and the costs shall be deducted from the binder deposit. (This shall include but not be limited to: the transaction not closing because Seller elects not to make a mortgage loan to Buyer after evaluating Buyer's credit, employment and financial information; Buyer is unable to obtain the required third party financing as provided for in this Agreement; or Buyer breaches this Agreement.)
b. If this transaction fails to close through no fault of the Buyer, all loans and sales processing and closing costs incurred, whether the same were to be paid by Seller or Buyer, shall be the responsibility of Seller; and Buyer shall be entitled to the return of the binder deposit. (This shall include but not be limited to: the transaction not closing because Seller is unable or unwilling to complete the transaction for a qualified Buyer; the property does not appraise for an amount sufficient to enable the lender to make the required loan; Seller cannot deliver a marketable title; or Seller breaches this agreement.)
18. **ATTORNEY FEES OR COSTS:** In any action arising out of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.
19. **TYPEWRITTEN OR HANDWRITTEN PROVISIONS** inserted in this form shall supersede any and all printed provisions in conflict therewith.
- SPECIAL PROVISIONS:**

See ADDENDUM - ATTACHED

Subject to Buyer Attorney Review & Approval.

20. **MEDIATION CLAUSE:** Any dispute or claim arising out of or relating to this contract, the breach of this contract or the services provided in relation to this contract shall be submitted to mediation in accordance with the Rules and Procedures of the HomeSellers/Homebuyers Dispute Resolution System. Disputes shall include representations made by the Buyer, Seller or any Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.
- By initialing in the place below, you hereby acknowledge that you have received, read and understand the standard announcement brochure for the HomeSellers/Homebuyers Dispute Resolution System and agree to submit disputes as described above to mediation.

Buyer's Initials

Seller's Initials

IX

ISCN, J. J.

TIME FOR ACCEPTANCE; EFFECTIVE DATE: If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before MAY 10, 1992, the deposit(s) will, at Buyer's option, be returned to Buyer and the offer withdrawn.

The date of this contract ("Effective Date") will be the date when the last one of the Buyer and the Seller has signed this offer.

WITNESS:

BUYER: I (we) have read this contract prior to signing it.

Mark S. Carter (SEAL)
Carol Ann Carter (SEAL)

I, (we), agree to sell the above mentioned property to the above named Buyer or his Nominee on the terms and conditions stated in the above instrument and by the signature attached on the 18 day of MAY 19 92 signify our acceptance and approval of the proposed sale.

WITNESS:

SELLER: I (we) have read this contract prior to signing it.

Gregory C. Meyer (SEAL)
Shirley J. Meyer (SEAL)

Judith L. Clif

ADDENDUM

This Addendum is entered into on the dates below written by and between Mark Carter and wife, Renee Carter (hereinafter referred to as Buyer) and Mr. and Mrs. Gregory Meyer (hereinafter referred to as Seller) and the parties agree as follows:

1. Buyer shall be entitled to lease the subject property from Seller for a period of one year from the date of execution of this agreement at a rental rate of \$1,500.00 per year. Buyer shall have the right to renew this lease for four additional one year terms at the same \$1,500.00 annual rental rate. Buyer shall notify Seller in writing at least 30 days in advance of the termination of each rental term of his intent to renew the lease for an additional one year term. If Buyer exercises his option to purchase the subject property then the total amount of lease payments paid to Seller during the lease terms shall be applied and credited towards the purchase price.

2. During the term of the lease described above or any other renewal or extension thereof, Buyer shall have the exclusive option to purchase the subject real property on the terms and conditions set forth in the purchase agreement to which this Addendum is attached. Buyer shall exercise this option to purchase by providing Seller and Seller's real estate broker/agent with written notification of his intent to exercise this option to purchase. The sale of the real property shall then close within sixty days of the date that Buyer gives Seller written notice of his intent to exercise this option to purchase. If Buyer chooses not to exercise this option to purchase, then he shall deliver written

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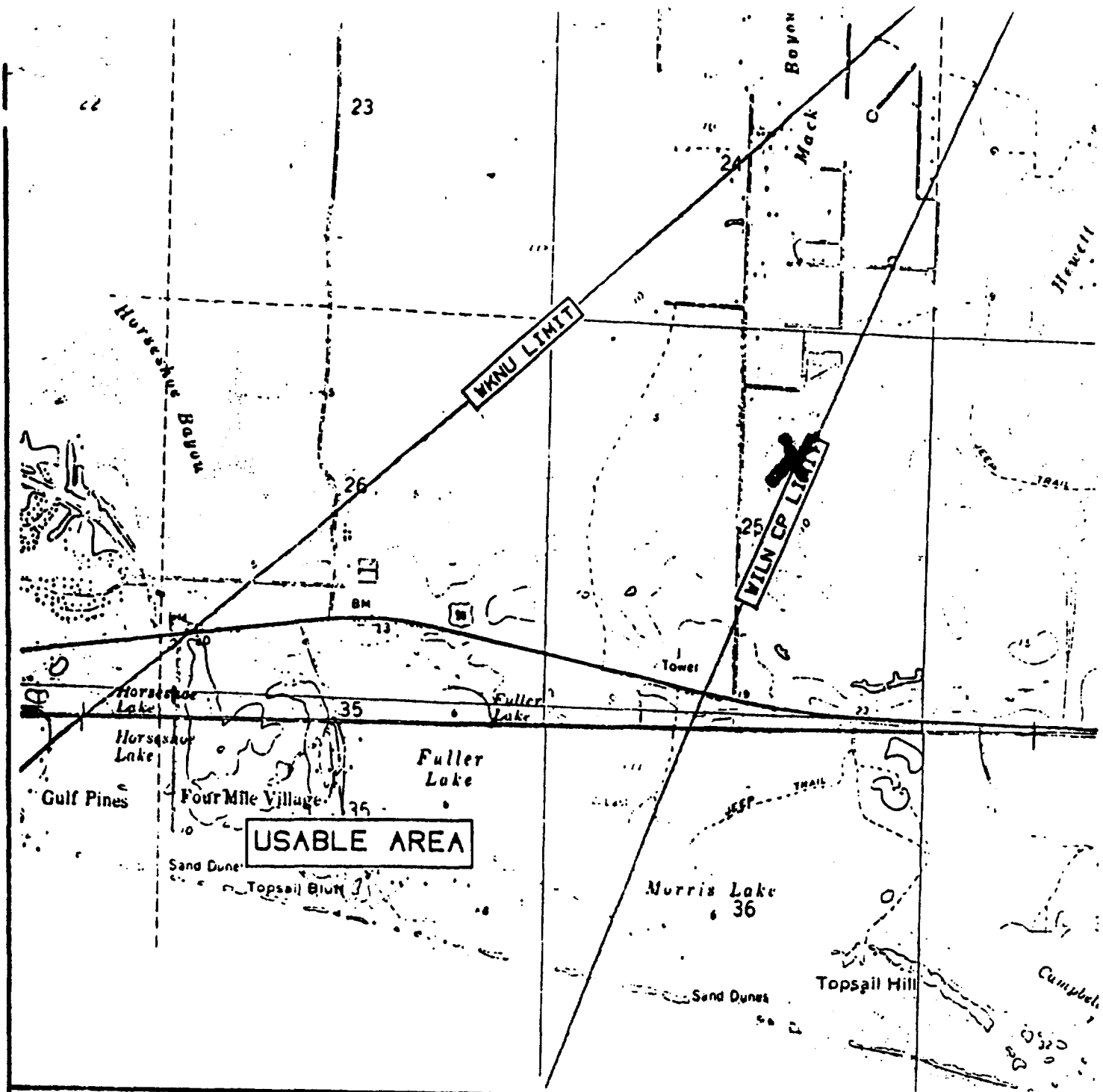
notice to Seller of his intent to not exercise this option and within 10 days of the date of said notice, Seller shall refund to Buyer all monies that Buyer has paid to Seller as and for rental payments.

3. The parties acknowledge that Buyers are planning on using the subject real property as a radio tower site and that Buyers anticipate requiring approximately 3.5 to 4 acres of land for this purpose. The \$80,400.00 purchase price is based upon Buyer purchasing four acres at \$20,100.00 per acre. If Buyers determine that they will not require the full four acres, then they shall be entitled to purchase less than the full four acres and the purchase price will be adjusted according to a formula of \$20,100.00 per one acre. In any event, Buyer shall not be entitled to purchase less than 3.5 acres.

4. The parties acknowledge that the subject real property is land locked and therefore, Seller shall provide Buyer with a 20 foot easement for ingress, egress and utilities along the north boundary line of lot 27. If Buyer exercises his option to purchase, then at closing this easement shall be granted to Buyer by the appropriate deed, easement or other instrument.

5. If Buyers receive final FCC approval to build a radio tower with FM frequency, then Buyers shall have 90 days from the FCC final order to exercise their option to purchase. Buyers agree that they shall not perform any construction upon the subject real property until such time as they exercise option to purchase and close the purchase of the property.

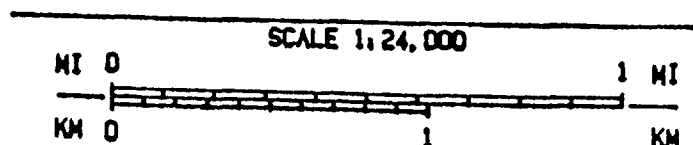
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USABLE AREA CHANNEL 292

YELLOW BORDERED AREA IS USABLE AREA.

MAP IS A USGS 1:24,000 SCALE.



USABLE AREA STUDY
MARK CARTER
CH 292A - 106.3 MHZ - 3 KW
SANTA ROSA BEACH, FLORIDA

DECEMBER 1988

BROMO COMMUNICATIONS, INC.

P.O. BOX M
ST. SIMONS ISLAND, GA 31522
(912) 638-5608

